

Applicants: Allan Green et al.
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Filed : October 17, 2001
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REMARKS

Claims 26-49 were pending in the subject application. By this Amendment applicants have amended claim 1 to comply with Examiner McElwain's request during an April 27, 2005 telephone conference with the undersigned. Accordingly, claims 26-49 are presented for the Examiner's consideration.

Initially, applicants thank Examiner McElwain for the courtesy extended during the April 27, 2005 telephone conference with the undersigned.

The April 20, 2005 Communication was discussed during the April 27, 2005 telephone conference. In response, and based on the April 27, 2005 discussion with Examiner McElwain as detailed more fully below, applicants elect, with traverse, SEQ ID NO. 3 and the corresponding amino acid sequence SEQ ID NO. 4 for initial examination. However, as discussed with Examiner McElwain, applicants make this election solely to advance prosecution, and traverse on the grounds set forth in their January 31, 2005 Response. Furthermore, applicants are making this election without waiving their right to petition for the examination of amended generic linking claim 26 in its entirety for the reasons of record and as set forth herein.

As applicants noted in their January 31, 2005 Response, and reiterated during the April 27, 2005 telephone conference, the February 17, 2004 requirement is at most an election of species requirement. During the April 27, 2005 telephone conference, Examiner McElwain requested that applicants indicate if, and if so, how, SEQ ID Nos: 1, 3, 5 and 19 are related so that the Examiner may consider classifying the February 17, 2004 a requirement for election of species. In response, the relationship of the sequences is disclosed throughout applicants' specification, *inter alia*, in Figure 2 and the accompanying

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disclosure, where SEQ ID NOs: 1, 3, 5 and 19 are classified as belonging to the family of plant fatty acid epoxygenase genes, and where the alignment of the amino acid sequences is shown. For example, amino acid sequences SEQ ID NOs. 2 and 4 shown in Figure 2 (of which SEQ ID NOs. 1 and 3 are corresponding nucleic acid sequences, respectively) have the same length (374 amino acids) as shown in Figure 2 and are 97% identical as discussed in the paragraph bridging pages 60 and 61 of applicants' specification.

Thus, applicants respectfully submit that the February 17, 2004 requirement is at most a requirement for election of species. Being an election of species requirement, if the elected SEQ ID NOs. are found patentable, applicants look forward to the examination of all species encompassed by generic claim 26.

Moreover, applicants point out that claim 26 is a linking claim to all of the purported groups set forth in the February 17, 2004 restriction requirement. Thus, pursuant to M.P.E.P. § 809.03, even if the Examiner maintains that the February 17, 2004 requirement is for a "restriction" and not an "election of species", once linking claim 26 (or any linking claim) is found allowable, then according to M.P.E.P. § 809 all claims which include all of the limitations of the linking claim must be examined in their entirety. Applicants appreciate Examiner McElwain's agreement during the April 27, 2005 telephone conference to consider whether claim 26 is a linking claim and proceed accordingly.

To summarize, applicants are making this election with traverse on the bases set forth in their January 31, 2005 Response and herein. Furthermore, applicants point out that claim 26 is both generic to, and a linking claim of, all of the purported groups set forth in the February 17, 2004 requirement. Therefore, regardless of whether the February 17, 2004 is a requirement for

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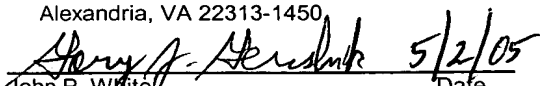
"restriction", or for "election of species", claim 26 and claims incorporating all limitations thereof must be examined in the subject application.

Finally, during the April 27, 2005 telephone conference, Examiner McElwain requested that claim 26 be amended to clarify that claim 26 is directed to the same general invention as original claim 21 which was subject to the February 17, 2004 restriction requirement. Specifically, the Examiner noted that original transgenic plant claim 21 referred to and incorporated the nucleic acid of original claim 1, i.e. a nucleic acid that encodes a plant fatty acid epoxygenase polypeptide. To clarify that claim 26 is directed to the same general invention as original claim 21, applicants have amended claim 26 to recite a transgenic plant comprising a nucleic acid that encodes a plant fatty acid epoxygenase polypeptide. As agreed during the April 27, 2005 telephone conference, claim 26 as amended and all claims incorporating the limitation of claim 26 will be examined in the subject application. Applicants look forward to examination of currently pending claims 26-49.

No fee is deemed necessary in connection with the filing of this Amendment. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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 5/2/05
John P. White Date
Reg. No. 28,678
Gary J. Gershik
Reg. No. 39,992

John P. White
Registration No. 28,678
Gary J. Gershik
Registration No. 39,992
Attorneys for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400